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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
AT YAKIMA

RICHARD S. WILKINSON, an individual,  
RYAN N. COLE, an individual, and  
RICHARD J. EGGLESTON, an individual,

Plaintiffs,  
v.

SCOTT RODGERS in his personal capacity  
and in his official capacity as a Member of  
the Washington Medical Commission,  
MONICA DE LEON in her personal  
capacity and in her official capacity as  
Executive Director of the Washington  
Medical Commission, JIMMY CHUNG, in  
his personal capacity and in his official  
capacity as chair of the Washington Medical  
Commission, KAREN DOMINO in her  
personal capacity and in her official capacity  
as chair elect of the Washington Medical  
Commission, TERRY MURPHY in his  
personal capacity and in his official capacity  
as vice chair of the Washington Medical  
Commission, SARAH LYLE in her personal

COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF FOR VIOLATION OF  
FEDERAL CIVIL RIGHTS UNDER  
42 U.S.C. § 1983

CASE NO.: \_\_\_\_\_

COMPLAINT FOR TEMPORARY  
RESTRAINING ORDER,  
DECLARATORY AND  
INJUNCTIVE RELIEF FOR  
VIOLATION OF FEDERAL CIVIL  
RIGHTS UNDER 42 U.S.C. § 1983

JURY DEMAND

Silent Majority Foundation 5238 Outlet Dr. Pasco, WA 99301
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1 capacity and her official capacity as a  
2 Member of the Washington Medical  
3 Commission, PO-SHEN CHANG in his  
4 personal capacity and in his official capacity  
5 as a Member of the Washington Medical  
6 Commission, APRIL JAEGER in her  
7 personal capacity and in her official capacity  
8 as a Member of the Washington Medical  
9 Commission, ANJALI D'SOUZA in her  
10 personal capacity and in her official capacity  
11 as a Member of the Washington Medical  
12 Commission, HARLAN GALLINGER in his  
13 personal capacity and in his official capacity  
14 as a Member of the Washington Medical  
15 Commission, MABEL BONGMBA in her  
16 personal capacity and in her official capacity  
17 as a Member of the Washington Medical  
18 Commission, RICHARD WOHNS, in his  
19 personal capacity and in his official capacity  
20 as a Member of the Washington Medical  
21 Commission, ED LOPEZ in his personal  
22 capacity and in his official capacity as a  
23 Member of the Washington Medical  
24 Commission, ARLENE DORROUGH in her  
25 personal capacity and in her official capacity  
26 as a Member of the Washington Medical  
27 Commission, TONI BORLAS, in his  
28 personal capacity and in his official capacity  
as a Member of the Washington Medical

COMPLAINT FOR INJUNCTIVE AND  
DECLARATORY RELIEF AND  
VIOLATION OF CIVIL RIGHTS  
UNDER 42 USC § 1983- 1

Silent Majority Foundation  
5238 Outlet Dr.  
Pasco, WA 99301

Commission, ROBERT PULLEN, in his personal capacity and in his official capacity as a Member of the Washington Medical Commission, MICHAEL BAILEY in his personal capacity and in his official capacity as a Member of the Washington Medical Commission, YANLING YU, in her personal capacity and in her official capacity as a Member of the Washington Medical Commission, ALDON W. ROBERTS in his personal capacity and in his official capacity as a Member of the Washington Medical Commission, JOHN MALDON in his personal capacity and in his official capacity as a Member of the Washington Medical Commission, MICHAEL FARRELL in his personal capacity and in his official capacity as Washington Medical Commission Staff Attorney and Policy Development Manager,

Defendants.

## I. INTRODUCTION

On September 22, 2021, through a Special Meeting with limited notice<sup>2</sup> and

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1 Governor Jay Inslee declared a COVID-19 State of Emergency on February 29, 2020; the WMC could have issued a rule any time in the 18 months preceding the issuance of the Statement but chose not to. *See: Proclamation 20-05, COVID-19.*

Available at: <https://www.governor.wa.gov/sites/default/files/proclamations/20-05%20Coronavirus%20%28final%29.pdf>. Last accessed February 6, 2023.

2 Meeting notice available at: <https://wmc.wa.gov/meetings/special-meeting-covid-19-misinformation-statement>. Last accessed February 6, 2023.

1 without opportunity for public comment,<sup>3</sup> the Washington Medical Commission  
2 (“WMC”) adopted a position statement on *COVID-19 Misinformation* (“Statement”  
3 or “Position Statement”). *See*: Exhibit 1. No attendance roster of this Meeting was  
4 published. The Statement officially extended the WMC’s “support[] [of] the position  
5 taken by the Federation of State Medical Boards (FSMB) regarding COVID-19  
6 vaccine misinformation” and adopted a standard of care for Washington medical  
7 providers’ treatment of COVID-19. That “standard” adopted through the Statement  
8 was a deferral to and reliance on the FDA’s approval of medication COVID-19  
9 treatment: “WMC relies on the U.S Food and Drug Administration approval of  
10 medications to treat COVID-19 to be the standard of care.” Notably, the Washington  
11 State Legislature had already adopted a COVID-19 standard of care on May 10,  
12 2021, through the adoption of Substitute Senate Bill 5271, *Civil Actions Against*  
13 *Health Care Providers—COVID-19 Pandemic*, which was adopted as Revised Code  
14 of Washington (“RCW”) Section 7.70.040. Exhibit 2. RCW 7.70.040(1) provides  
15 the following “reasonably prudent” standard for medical professionals: “a health  
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22 3 Washington Medical Commission Special Meeting, September 21, 2021. “While  
23 this meeting is open to the public, we will not be taking public comment or  
24 responding to questions during this meeting.” Available at:

25 <https://www.youtube.com/watch?v=P5qDoNWfdhI>. Last accessed: February 2,  
26 2023.  
27  
28

1 care provider at that time in the profession or class to which he or she belongs, in the  
2 state of Washington, acting in the same or similar circumstances.” *Id.* Moreover,  
3 RCW 7.70.040 set forth specific elements of proof that the Statement failed to adopt.  
4 The WMC’s adoption of the “standard,” which it now enforces against Plaintiffs, via  
5 the Statement was unjustified, undefined, unnecessary, and duplicative as it was non-  
6 binding and was preceded by 7.70.040 over four months. More importantly, the  
7 Statement was adopted and implemented outside the WMC’s statutory authority and  
8 legal rulemaking processes violating the Administrative Procedures Act in addition  
9 to violating Plaintiffs’ civil rights. *See:* Count V, below. These circumstances show  
10 good cause as to why the WMC’s statutory immunity found in RCW 18.130.300(1)  
11 does not apply leaving Defendants with no immunity.  
12

13  
14 In addition to adopting a standard of care, the WMC has enforced the Statement  
15 against medical practitioners, including all three Plaintiffs. Plaintiffs Cole and  
16 Wilkinson have been subject to charges based both on their speech and on their  
17 reasonable treatment of patients based on this statement. Plaintiff Eggleston has  
18 been subject to charges based solely on his speech as he is currently retired.  
19

20  
21 Finally, the Statement shows its naked bias and discrimination by encouraging  
22 reporting of “violators” of the “standard,” as follows: “The public and practitioners  
23 are encouraged to use the WMC complaint forms when they believe the standard of  
24 care has been breached.” The WMC has weaponized its illegal Statement throughout  
25 the COVID-19 pandemic, even though it has not updated the Statement with current  
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1 science or data and continues to punish medical professionals who fail to adhere to  
2 the stale information and data from 2020 and 2021 relied upon by the WMC when  
3 it adopted the Statement. For example, the Statement did not change position on  
4 vaccines, even when Dr. Anthony Fauci, former director of Nation Institute of  
5 Allergy and Infectious Diseases Dr. Rochelle Walenksy, Director of the Center for  
6 Disease Control, admitted that the vaccines were ineffective in ceasing transmission  
7 of COVID-19.<sup>4</sup> Moreover, the WMC has ignored, whether maliciously,  
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12 4 See: Centers for Disease Control and Prevention, COVID-19, *Interim Public*  
13 *Health Recommendations for Fully Vaccinated People*, July 27, 2021. Available at:  
14 [https://web.archive.org/web/20210728032236/https://www.cdc.gov/coronavirus/20](https://web.archive.org/web/20210728032236/https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html)  
15 [19-ncov/vaccines/fully-vaccinated-guidance.html](https://web.archive.org/web/20210728032236/https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html); *Fully vaccinated people who get*  
16 *a Covid-19 breakthrough infection can transmit the virus, CDC chief says*, August  
17 6, 2021. Available at: [https://www.cnn.com/2021/08/05/health/us-coronavirus-](https://www.cnn.com/2021/08/05/health/us-coronavirus-thursday/index.html)  
18 [thursday/index.html](https://www.cnn.com/2021/08/05/health/us-coronavirus-thursday/index.html); *Fauci admits that COVID-19 vaccines do not protect ‘overly*  
19 *well’ against infection*, Fox News, July 12, 2022. Available at:  
20 [https://www.foxnews.com/media/fauci-admits-covid-19-vaccines-protect-overly-](https://www.foxnews.com/media/fauci-admits-covid-19-vaccines-protect-overly-well-infection)  
21 [well-infection](https://www.foxnews.com/media/fauci-admits-covid-19-vaccines-protect-overly-well-infection). Last accessed: February 24, 2023. See also: United States House of  
22 Representatives Committee on Oversight and Accountability Press Release, March  
23 8, 2023: *COVID Origins Hearing Wrap Up: Facts, Science, Evidence Point to a*  
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1 intentionally, or unintentionally, the FDA’s following position on ivermectin, which  
2 is that the FDA’s ivermectin statements were:

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4 [N]onbinding recommendations to consumers, they are not rules and,  
5 thus, are not agency action as required for waiver of sovereign  
6 immunity. They did not bind the public or FDA, did not interpret any  
7 substantive rules, and did not set agency policy.

8 The statements are also not final agency action. They do not mark the  
9 consummation of FDA’s decision-making process because they do not  
10 state FDA’s final position on the use of ivermectin to treat COVID-19  
11 but instead present FDA’s tentative recommendations based on  
12 currently available data.

13 They also do not have legal consequences for anyone but simply  
14 provide nonbinding recommendations to consumers.<sup>5</sup>

15  
16 *Wuhan Lab Leak*. Available at: [https://oversight.house.gov/release/covid-origins-](https://oversight.house.gov/release/covid-origins-hearing-wrap-up-facts-science-evidence-point-to-a-wuhan-lab-leak%EF%BF%BC/)  
17 [hearing-wrap-up-facts-science-evidence-point-to-a-wuhan-lab-leak%EF%BF%BC/](https://oversight.house.gov/release/covid-origins-hearing-wrap-up-facts-science-evidence-point-to-a-wuhan-lab-leak%EF%BF%BC/)  
18 wherein ex-CDC director, Dr. Robert Redfield testified that Dr. Anthony Fauci’s  
19 approach to the COVID-19 origins narrative was “antithetical to science.” Redfield  
20 testified: “If you really want to be truthful, it’s antithetical to science. Science has  
21 debate, and they squashed any debate.” *See also*: [https://www.johnlocke.org/ex-cdc-](https://www.johnlocke.org/ex-cdc-director-takes-fauci-to-task-on-covid/)  
22 [director-takes-fauci-to-task-on-covid/](https://www.johnlocke.org/ex-cdc-director-takes-fauci-to-task-on-covid/). Last accessed: March 10, 2023.

23 *5 Apter v. Department of Health and Human Services, et al.*, (SDTX, No.: 3:22-cv-  
24 00184) Hearing on Motion to Dismiss, US Department of Justice Attorney, Isaac  
25 Belfer (November 1, 2022; asserting FDA position on Ivermectin for treatment of  
26 COVID-19.). Exhibit 3.  
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1 Similarly, the WMC recently argued in the prosecution of Plaintiff Wilkinson's  
2 license (in the administrative hearing before the WMC, itself) that the Statement "is  
3 an advisory statement intended to help licensees steer clear of the pitfalls of COVID  
4 misinformation into which Respondent fell."<sup>6</sup>

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6  
7 The WMC's Position Statement is a complete reversal of a Statement it  
8 adopted a short 18 months prior through the "Statement on Chloroquine," which  
9 offered providers support, latitude, and discretion in treating COVID-19 patients:  
10 "We want providers and pharmacists to act with their best discretion to ensure  
11 patients continue to receive appropriate treatment in time of shortages."<sup>7</sup> It is also a  
12 markedly different position from the WMC's *Pandemic Regulatory Intent* adopted  
13 18 months prior, which read, in part:

14  
15  
16 **[R]egulatory agencies must support the front-line practitioners.** We  
17 recognize there are shortages of equipment and that difficult to  
18 impossible decisions must be made. ... Under these conditions,  
19 practitioners need support, not fear of regulatory action. ... Under these  
20 circumstances, practitioners deserve and have the support of the WMC.

21  
22 <sup>6</sup> *In Matter of License to Practice as a Physician and Surgeon of: Richard S.*  
23 *Wilkinson, MD, License No. MD.MD.00016229, Commission's Opposition to*  
24 *Respondent's Motion to Dismiss Charges 1.7-1.9.* Filed March 6, 2023.

25 <sup>7</sup> WMC Statement on Chloroquine, available at:

26 <https://wmc.wa.gov/news/wmc%C2%A0statement-chloroquine>. Adopted March  
27 23, 2020. Last accessed: February 2, 2023.



1 Practitioners should not fear for their well-intentioned actions. During  
2 this crisis, the WMC will focus on the intent of the practitioner and the  
3 realistic availability or non-availability of possible alternatives. Put  
4 another way, when assessing complaints related to practitioner’s work  
5 we will consider the difficult circumstances and choices they are facing.  
6 The WMC wants you to focus on treating the patient in front of you to  
7 the best of your ability.<sup>8</sup>

8 It bears noting that other States have adopted regulations similar to the Statement,  
9 including California’s Assembly Bill 2098 (“AB 2098”), *Physicians and surgeons:*  
10 *unprofessional conduct*, which adopted California Business & Professions Code §  
11 2270.<sup>9</sup> However, unlike AB 2098, which was adopted through the legislative process  
12 and signed into law by Governor Gavin Newsom, the Commission’s Statement was  
13 adopted in near secret as a “position statement” with little advertisement (limited to  
14 the statutory required 24-hour window, *See*: RCW 42.30.080(2)(c)). While the  
15 Statement was advertised as a benign, precautionary measure, it has had significant

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18 <sup>8</sup> WMC *Pandemic Regulatory Intent*, available at: [https://wmc.wa.gov/news/wmc-](https://wmc.wa.gov/news/wmc-pandemic-regulatory-intent)  
19 [pandemic-regulatory-intent](https://wmc.wa.gov/news/wmc-pandemic-regulatory-intent). Adopted March 25, 2020. Last accessed: February 2,  
20 2023. (Emphasis added.)

21  
22 <sup>9</sup> California Assembly Bill 2098: *Physicians and surgeons: unprofessional*  
23 *conduct*.  
24 [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB)  
25 [2098](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB). Approved by the Governor, September 30, 2022. Site last accessed:  
26 February 3, 2023.  
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1 effect on the regulated physicians throughout Washington as it has been the leading  
2 edge of the sword used to prosecute medical professionals who willingly speak  
3 against the Commission's sanctioned "information."  
4

5 On January 25, 2023, the District Court for the Eastern District of California  
6 GRANTED a Preliminary Injunction, enjoining enforcement of "Cal. Bus. & Prof.  
7 Code § 2270 as against plaintiffs, plaintiffs' members, and all persons represented  
8 by plaintiffs." *Hoeg v. Newsom*, 2:22-cv-01980-WBS-AC, ECF No.: 35, at 29. *See*:  
9 Exhibit 4. With the striking similarities between the challenged California Code and  
10 the WMC's Statement challenged in this action, this Court should follow its sister  
11 court and enjoin enforcement of the Statement, although the scope of the Injunction  
12 should expand to all medical practitioners in Washington.  
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## 16 **II. JURISDICTION AND VENUE**

17 1. Each Defendant is properly named as an individual who has participated in  
18 the review, analysis, or charging any or all named Plaintiffs with a violation of  
19 Washington Medical Commission's *COVID-19 Misinformation* Position Statement.  
20

21 2. Plaintiffs bring this action under Section 1 of the Civil Rights Act of 1871, 42  
22 U.S.C. § 1983 and under the First and Fourteenth Amendments of the United States  
23 Constitution. This Court has jurisdiction over the requested declaratory relief under  
24 28 U.S.C. §§ 2201 and 2202. This Court has jurisdiction under 28 U.S.C. § 1331 and  
25 § 1343.  
26

27 3. This Court has supplemental jurisdiction over the state law claims under 28  
28

1 U.S.C. § 1367.

2 4. This Court has jurisdiction over costs and attorneys' fees under 42 U.S.C.  
3 Section 1988 (b).  
4

5 5. Venue is proper due to Plaintiffs Eggleston and Wilkinson's residences and  
6 Plaintiff Wilkinson's practice within the jurisdictional boundaries of the Eastern  
7 District of Washington. Thus, and a substantial portion of the events giving rise to  
8 the claims occurred within the Eastern District of Washington. Plaintiff Cole is an  
9 out of state resident. 28 U.S.C. § 1391(b)(2).  
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### 12 **III. PARTIES**

#### 13 **Plaintiffs**

14 6. Plaintiff Richard Wilkinson is a resident of Yakima, Washington and  
15 maintains a medical license in Washington. Wilkinson has been licensed to practice  
16 as a physician and surgeon in Washington since 1977; Wilkinson's license is issued  
17 and regulated by the Commission. Wilkinson is the owner of Wilkinson Wellness  
18 Clinic in Yakima, WA. Wilkinson Decl., ¶ 2.  
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21 7. The Commission received complaints regarding statements Wilkinson made  
22 regarding COVID-19 on his blog maintained on the Wilkinson Wellness Clinic  
23 website (<https://wilkinsonwellness.com/blog>) and for his treatment of patients who  
24 had tested positive for COVID-19 with ivermectin. These complaints lead to SOC  
25 M2022-196. Exhibit 5: SOC No. M2022-196.  
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1 8. SOC No. M2022-196 was issued on June 7, 2022, and addresses Wilkinson's  
2 public COVID-19 blog statements as follows: "Respondent's public false and  
3 misleading statements regarding the COVID-19 pandemic, COVID-19 vaccines,  
4 and public health officials are harmful and dangerous to individual patients, generate  
5 mistrust in the medical profession and in public health, and have a wide-spread  
6 negative impact on the health and well-being of our communities." *Id.*

7  
8  
9 9. Wilkinson has a hearing before the Commission on SOC No. M2022-196  
10 scheduled for April 3, 2023, through April 7, 2023. The issuance of an injunction as  
11 requested in this matter would or could alleviate the need for (all or some of) the  
12 hearing, conserving both Wilkinson and the State's resources.

13  
14 10. Since the Commission has made the investigations of Wilkinson public,  
15 including the publication of SOC No. M2022-196, Wilkinson has suffered  
16 reputational harm and has suffered a loss of his First Amendment rights as his right  
17 to free speech has been accosted and trampled through the Commission's  
18 "misinformation" and "disinformation" campaign that culminated in the Statement.  
19 Wilkinson Decl., ¶ 7.

20  
21  
22 11. Plaintiff Ryan Cole is a resident of Idaho and maintains medical licenses in  
23 nine states including Washington; Cole's Washington license is issued and regulated  
24 by the Commission. Declaration of Ryan Cole, ("Cole Decl."), ¶ 3. Prior to COVID-  
25 19, Cole's Washington license allowed him to service Washingtonians who sent skin  
26 biopsies to Cole for laboratory review. Cole practices in Idaho but was contacted by  
27  
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1 Washington residents via telehealth seeking assistance with COVID-19 treatment  
2 throughout the pandemic. Cole is the former owner of Cole Diagnostics, a medical  
3 diagnostic laboratory located in Boise, ID. *Id.*, at ¶ 4.

5 12.Cole Received his medical degree from Virginia Commonwealth University-  
6 Medical College of Virginia, in 1997, then attended a Residency in Anatomic and  
7 Clinical Pathology at the Mayo Clinic in Rochester, MN from 1997-2001, which  
8 was followed by a Surgical Pathology Fellowship (Chief Fellow) at the Mayo Clinic  
9 from 2001-2002. Cole then completed a Dermatopathology Fellowship (Chief  
10 Fellow) at the Ackerman Academy of Dermatopathology, Columbia University  
11 from 2002-2003. *Id.*, at ¶ 2, Exh., 1.

14 13.Prior to the COVID-19 pandemic and the Commission's adoption of the  
15 Statement, Cole was never disciplined by the Commission. Since the adoption of the  
16 Statement, Cole has been the target of many complaints, several of which have been  
17 investigated by the Commission. These investigations include, but are not limited to  
18 Files No.: 2021-10232, 2021-10853, 2021-11434, 2021-11662, 2021-11729, which,  
19 upon information and belief, culminated in the Commission's Statement of Charges  
20 ("SOC") No.: 2022-207, issued on January 10, 2023. Exh. 5, SOC No. 2022-207.  
21 Cole is represented by legal counsel (not present counsel) to defend SOC 2022-207;  
22 a hearing date has not been set.

26 14.Statement of Charges No.: 2022-207 alleges that Cole:

28 [M]ade numerous false and misleading statements during public  
COMPLAINT FOR INJUNCTIVE AND  
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VIOLATION OF CIVIL RIGHTS  
UNDER 42 USC § 1983- 12

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1 presentations regarding the coronavirus disease 2019 (COVID-19)  
2 pandemic, COVID-19 vaccines, the use of ivermectin to treat COVID-  
3 19, and the effectiveness of masks that were harmful and dangerous to  
4 individual patients, generated mistrust in the medical profession and in  
5 public health, and had a wide-spread negative impact on the health and  
6 well-being of our communities. Respondent also provided negligent  
7 care to Patients A, B, C, and D to prevent or treat COVID-19 infections.  
8 For all of these patients, Respondent prescribed medications that are  
9 not indicated for a COVID-19 infection, failed to properly document  
10 adequate justification for the treatment in the medical record, failed to  
11 take a history or perform a physical examination, and failed to obtain  
12 appropriate informed consent. Respondent also provided inadequate  
13 opportunity for follow-up care, treated patients beyond his competency  
14 level, and did not advise patients about standard treatment guidelines  
15 and preventative measures. SOC No.: 2022-207, at 1.

12 15.The SOC and other investigations have negatively impacted Cole and his  
13 practice as Cole has been required to dissolve his Pathology practice, Cole  
14 Diagnostics. In 2019 (pre-pandemic), Cole had an offer to sell Cole Diagnostics at  
15 the price of \$12,000,000, which was subsequently rescinded as revenue declined and  
16 due to the negative press on Cole. *Id.*, at ¶ 12.

18 16.Prior to the COVID-19 pandemic, Cole held contracts with several national  
19 and regional insurance carriers; however, the negative implications of the board  
20 reports and the associated media attention, in-network contracts with St. Luke's  
21 Health Partners, Pacific Source, Mountain Health Co-op, and Cigna were terminated  
22 after Commission's publication of the Charges against Cole.

25 17.Since the Commission has made the investigations of Cole public, including  
26 the publication of SOC No. No 2022-207, Cole has lost several of these contracts,  
27 including the following contracts. *Id.*, at ¶ 4. Pre-pandemic, in 2019, Cole

1 Laboratories had a net income of \$2,102,165; the net income for 2020 increased to  
2 \$3,341,732 with a maintenance of the value of diagnostic services and an increase  
3 of revenue for COVID-19 testing; the 2021 net income decreased to \$2,530,107; and  
4 the 2022 net income decreased to a loss of \$13,403. *Id.*, at ¶ 4; Exh. 2. The 2021  
5 decreases in net income were primarily related to the loss of revenue associated with  
6 COVID-19 testing, and the 2022 income loss was due to the lost insurance contracts.  
7  
8  
9 *Id.*

10 18. Prior to the dissolution of Cole Diagnostics, Cole anticipated working 10 more  
11 years and would have sold Cole Diagnostics at the conclusion of that period.  
12 Assuming a conservative annual revenue stream of \$2,000,000 (based on the 2019-  
13 2021 net income) and factoring in the potential sales of Cole Diagnostics at the  
14 \$12,000,000 offer, Cole would have had a total net income of \$32 million at the  
15 conclusion of ten years, including the sales of Cole Diagnostics. *Id.*, at ¶ 13.  
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18 19. Aside from these damages, Cole has suffered reputational harm, having lost  
19 his Fellow status from the College of American Pathologists; has been informed that  
20 the American Board of Pathology has corresponded with states where Cole holds a  
21 license, to support disciplinary actions against Cole based his public statements  
22 related to COVID-19; and Cole lost his position as President Elect for Independent  
23 Doctors of Idaho. Cole has also suffered a loss of First Amendment rights as his right  
24 to free speech has been accosted and trampled through the Commission's  
25 "misinformation" and "disinformation" campaign that culminated in the Statement.  
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1 *Id.*, at ¶ 14.

2 20.Cole has suffered other damages, including \$50,000 in attorney fees spent in  
3 the defense of his license; limitations on his ability to practice medicine as discussed,  
4 above, and because of the time and effort spent in the defense of his license;  
5 difficulty in hiring and retaining employees due to the threats and difficult working  
6 conditions stemming from the opposition to Cole’s positions; and undue stress on  
7 Cole’s marriage and family for the personal and professional attacks he has suffered  
8 (including death threats) since he first openly advocated for early COVID-19  
9 treatment. *Id.*, at ¶ 15.

13 21.Plaintiff Richard Eggleston is a resident of Washington and was issued a  
14 license by the Commission to practice as a physician and surgeon on September 16,  
15 1974. Exh. 5, at 1. Eggleston maintains a medical license in Washington in “active  
16 retired” status. Eggleston’s license is issued and regulated by the Commission.  
17 Eggleston was the owner of Eggleston Eye Care Specialists in Clarkston, WA. prior  
18 to his retirement in 2012. Since his retirement, Eggleston has not actively treated  
19 patients, and has treated no COVID-19 patients. Eggleston, Decl., ¶¶ 2-4.

22 22.The Commission’s investigations of Eggleston, including the charges in SOC  
23 No. M2022-204, are founded on Eggleston’s speech, specifically, statements  
24 Eggleston made in “a periodic newspaper column for a regional newspaper that  
25 serves southeastern Washington and north central Idaho.” Exh. 6, at 1. Defendants  
26 concluded that these statements were “false” and constitute the “promulgat[ion] [of]  
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1 misinformation regarding the SARS-CoV-2 virus and treatments for the virus.” *Id.*,  
2 at 2.

3  
4 23. Since the publication of SOC No. M2022-204, Eggleston has suffered  
5 reputational harm and has suffered a loss of his First Amendment rights as his right  
6 to free speech has been accosted and trampled through the Commission’s  
7 “misinformation” and “disinformation” campaign that culminated in the Statement.  
8 Specifically, because Eggleston is not actively treating/receiving patients, his  
9 alleged “misinformation” and “disinformation” arises from publishing his opinions  
10 on COVID-19 as founded in his research, in the Lewiston Tribune.<sup>10</sup> Eggleston,  
11 Decl., ¶ 4. In fact, the entirety of the SOC is based on Eggleston’s speech against the  
12 mainstream COVID-19 narrative. Eggleston is no longer actively practicing  
13 medicine; the WMC is clearly targeting his speech. Eggleston has a 3-day hearing  
14 scheduled for his license May 24 - 26, 2023.

15  
16 24. SOC M2022-204 has also resulted in Eggleston needing to hire counsel (not  
17 present counsel) to defend his license and speech rights against the Commission’s

18  
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21  
22 10 See: *Opinion: What I wrote was intentional, but nit in error.* Eggleston,  
23 Richard. *Lewiston Tribune*, October 2, 2022. Available at:  
24 [https://lmtribune.com/opinion/opinion-what-i-wrote-was-intentional-but-not-in-](https://lmtribune.com/opinion/opinion-what-i-wrote-was-intentional-but-not-in-error/article_46557752-7717-5672-9735-a6ed2871705d.html)  
25 [error/article\\_46557752-7717-5672-9735-a6ed2871705d.html](https://lmtribune.com/opinion/opinion-what-i-wrote-was-intentional-but-not-in-error/article_46557752-7717-5672-9735-a6ed2871705d.html). Last accessed:  
26 February 15, 2023.  
27  
28

1 enforcement of the Statement.

2 25.All Plaintiffs have submitted a tort claim informing the State of Washington  
3 of the violations of each Plaintiff's civil rights alleged herein allowing for recovery  
4 of damages as deemed appropriate by this court. Exhibit 7 is a true and correct copy  
5 of the Washington Department of Enterprise Services' response of receipt of each  
6 Plaintiffs' Tort Claim form. Plaintiff Eggleston's claim was submitted on December  
7 16, 2022. Confirmation of the claim was received on December 22, 2022; the claim  
8 was assigned Tort Claim #3031011113. Plaintiff Wilkinson's claim was submitted  
9 on January 5, 2023. Confirmation of the claim was received on January 9, 2023; the  
10 claim was assigned Tort Claim #3031011305. Plaintiff Cole's claim was submitted  
11 on February 15, 2023. Confirmation of the claim was received on February 21, 2023;  
12 the claim was assigned Tort Claim #3031011775. Exh. 7. Counsel called the  
13 Attorney General's Office on March 6, 2023 requesting a status update on each Tort  
14 Claim and left a voicemail with the general phone number provided on the Tort  
15 Claims. Counsel has received no further response from the AGO regarding the Tort  
16 Claims.  
17  
18  
19  
20  
21

### 22 Defendants

23 26.Defendant Scott Rodgers is a member of the Washington Medical  
24 Commission and is sued in his personal capacity and in his official capacity. Upon  
25 information and belief, Defendant Rodgers participated in the development and  
26 adoption of the challenged Statement.  
27  
28

1  
2 27.Melanie De Leon is the Executive Director of the Washington Medical  
3 Commission and is sued in her personal capacity and in her official capacity. Upon  
4 information and belief, Defendant DeLeon participated in the development and  
5 adoption of the challenged Statement.  
6

7  
8 28.Defendant Jimmy Chung is a member of the Washington Medical  
9 Commission, is the chair of the Commission, and is sued in his personal capacity  
10 and in his official capacity. Upon information and belief, Defendant Chung  
11 participated in the development and adoption of the challenged Statement.  
12

13 29.Defendant Karen Domino is a member of the Washington Medical  
14 Commission, is the chair elect of the Commission, and is sued in her personal  
15 capacity and in her official capacity. Upon information and belief, Defendant  
16 Domino participated in the development and adoption of the challenged Statement.  
17

18 30.Defendant Terry Murphy is a member of the Washington Medical  
19 Commission, is the vice chair of the Commission, and is sued in his personal  
20 capacity and in his official capacity. Upon information and belief, Defendant  
21 Murphy participated in the development and adoption of the challenged Statement.  
22

23 31.Defendant Po-Shen Chang is a member of the Washington Medical  
24 Commission and is sued in her personal capacity and in her official capacity. Upon  
25 information and belief, Defendant Chang participated in the development and  
26 adoption of the challenged Statement.  
27  
28

1 32. Defendant April Jaeger is a member of the Washington Medical Commission  
2 and is sued in her personal capacity and in her official capacity. Upon information  
3 and belief, Defendant Jaeger participated in the development and adoption of the  
4 challenged Statement.  
5

6 33. Defendant Claire Trescott is a member of the Washington Medical  
7 Commission and is sued in her personal capacity and in her official capacity. Upon  
8 information and belief, Defendant Trescott participated in the development and  
9 adoption of the challenged Statement.  
10

11 34. Defendant Anjali D'Souza is a member of the Washington Medical  
12 Commission and is sued in her personal capacity and in her official capacity. Upon  
13 information and belief, Defendant D'Souza participated in the development and  
14 adoption of the challenged Statement.  
15

16 35. Defendant Harlan Gallinger is a member of the Washington Medical  
17 Commission and is sued in his personal capacity and in his official capacity. Upon  
18 information and belief, Defendant Gallinger participated in the development and  
19 adoption of the challenged Statement.  
20

21 36. Defendant Mabel Bongmba is a member of the Washington Medical  
22 Commission and is sued in her official capacity. Upon information and belief,  
23 Defendant Bongmba participated in the development and adoption of the challenged  
24 Statement.  
25

26 37. Defendant Richard Wohns is a member of the Washington Medical  
27  
28

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1 Commission and is sued in his personal capacity and in his official capacity. Upon  
2 information and belief, Defendant Wohns participated in the development and  
3 adoption of the challenged Statement.  
4

5 38. Defendant Elisha Mvundura is a member of the Washington Medical  
6 Commission and is sued in her personal capacity and in her official capacity. Upon  
7 information and belief, Defendant Mvundra participated in the development and  
8 adoption of the challenged Statement.  
9

10 39. Defendant Diana Currie is a member of the Washington Medical Commission  
11 and is sued in her personal capacity and in her personal capacity and in her official  
12 capacity. Upon information and belief, Defendant Currie participated in the  
13 development and adoption of the challenged Statement.  
14

15 40. Defendant Ed Lopez is a member of the Washington Medical Commission  
16 and is sued in his personal capacity and in his personal capacity and in his official  
17 capacity. Upon information and belief, Defendant Lopez participated in the  
18 development and adoption of the challenged Statement.  
19

20 41. Defendant Arlene Dorrough is a member of the Washington Medical  
21 Commission and is sued in her personal capacity and in her official capacity.  
22

23 42. Defendant Toni Borlas is a member of the Washington Medical Commission  
24 and is sued in her personal capacity and in her official capacity. Upon information  
25 and belief, Defendant Dorrough participated in the development and adoption of the  
26 challenged Statement.  
27  
28

1 43. Defendant Christine Blake is a member of the Washington Medical  
2 Commission and is sued in her personal capacity and in her official capacity. Upon  
3 information and belief, Defendant Blake participated in the development and  
4 adoption of the challenged Statement.  
5

6 44. Defendant Robert Pullen is a member of the Washington Medical  
7 Commission and is sued in his personal capacity and in his official capacity. Upon  
8 information and belief, Defendant Pullen participated in the development and  
9 adoption of the challenged Statement.  
10

11 45. Defendant Michael Bailey is a member of the Washington Medical  
12 Commission and is sued in his personal capacity and in his official capacity. Upon  
13 information and belief, Defendant Bailey participated in the development and  
14 adoption of the challenged Statement.  
15

16 46. Defendant Yanling Yu is a member of the Washington Medical Commission  
17 and is sued in her personal capacity and in her official capacity. Upon information  
18 and belief, Defendant Yu participated in the development and adoption of the  
19 challenged Statement.  
20

21 47. Defendant Alden W. Roberts was a member of the Washington Medical  
22 Commission at the time of the adoption of the Statement and is sued in his personal  
23 capacity and in his official capacity. Upon information and belief, Dr. Roberts  
24 revised draft Statement with the intent of incorporating a standard of care into the  
25  
26  
27  
28

1 Statement, which was incorporated into the final version of the Statement.<sup>11</sup>

2 48. Defendant John Maldon was a member of the Washington Medical  
3 Commission and the President of the Commission at the time of the adoption of the  
4 Statement and is sued in his personal capacity and in his official capacity. Upon  
5 information and belief, Mr. Maldon presided over the meeting where the Statement  
6 was adopted and assisted in the development of the Statement.<sup>12</sup>  
7  
8

9 49. Michael Farrell is a staff Attorney and Policy Development Manager for the  
10 Washington Medical Commission and is sued in his personal capacity and in his  
11 official capacity. Upon information and belief, Mr. Farrell, in his official capacity,  
12 advised the WMC on the adoption of the Statement as he was present at the special  
13 meeting where the Statement was adopted.  
14  
15

#### 16 IV. FACTS

17 50. The Commission's 21 board members are appointed by the Governor. Revised  
18 Code of Washington ("RCW") Section 18.71.015. Thirteen members are licensed to  
19 practice medicine; two are physician's assistants; and six are designated as "public  
20 members." *Id.*  
21  
22

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23 <sup>11</sup> Washington Medical Commission Special Meeting, September 21, 2021, at  
24 6:40-6:55, "providing information on a disease process is about standard of care  
25 and those are the edits he was trying to...to bring in..." *See*: fn. 3.  
26

27 <sup>12</sup> *See: Id.*  
28

1 51.The WMC is the state agency charged with investigating physicians,  
2 surgeons, Physician's Assistants, and other medical professionals for unprofessional  
3 conduct; the Commission held this authority prior to its adoption of the challenged  
4 Statement.  
5

6 52.The WMC adopted the Position Statement without public comment or input  
7 from the regulated community, and stated at the commencement of the meeting, in  
8 which the Statement was adopted, that public comment would not be allowed.  
9

10 53.The Statement provides that the Commission's "position on COVID-19  
11 prevention and treatment is that COVID-19 is a disease process like other disease  
12 processes, and as such, treatment and advice provided by physicians and physician  
13 assistants will be assessed in the same manner as any other disease process.  
14 Treatments and recommendations regarding this disease that fall below standard of  
15 care as established by medical experts, federal authorities and legitimate medical  
16 research are potentially subject to disciplinary action." Notably, a COVID-19  
17 standard of care existed at this time in RCW 7.70.040 and the Commission  
18 intentionally adopted the Statement as a standard of care. *See: fn. 11, Supra.* Yet,  
19 the Commission took the unique opportunity to unilaterally adopt a COVID-19  
20 Statement to include a Standard of Care that: (1) did not previously exist; (2)  
21 contravened RCW 7.70.040's reasonably prudent standard; (3) was not based on the  
22 practice of medicine in Washington; (4) did not take into consideration the Patient's  
23 right to informed consent; and (5) ignored that highly trained and experienced  
24  
25  
26  
27  
28



1 physicians, like Plaintiffs, could, and would, differ from the government's self-  
2 adopted "legitimate science" standard by opining and treating patients with  
3 alternative treatments based on experience and independent research.  
4

5 54.The Position Statement has both legal and punitive effects as Plaintiffs and  
6 other medical professionals (*See: In RE: Scott C. Miller, PA*, No. M2021-272) have  
7 experienced. To sanction/punish the medical professionals under the Statement, the  
8 Commission finds fault with the professionals' speech or conduct as it relates to the  
9 Statement *vis-à-vis* COVID-19, and then issues punishment under the claim that the  
10 individual's conduct constitutes Unprofessional Conduct pursuant to RCW  
11 18.130.180.  
12  
13

14 55.Unprofessional Conduct is defined in RCW 18.130.180 and includes issues  
15 such as: "moral turpitude, dishonesty, or corruption relating to the practice of the  
16 person's profession" (1); "Misrepresentation or concealment of a material fact" for  
17 licensing issues (2); "Incompetence, negligence, or malpractice which results in  
18 injury to a patient or which creates an unreasonable risk that a patient may be  
19 harmed." (4); "Misrepresentation or fraud in any aspect of the conduct of the  
20 business or profession" (13); and several other practices. Notably missing is a  
21 professional's divergence from a newly adopted administrative standard that was  
22 established based on "experts, federal authorities and legitimate medical research."  
23  
24 Each such term is vague and arbitrary without further definition and was used in the  
25 Statement.  
26  
27  
28

1 56.The Statement impermissibly intrudes on the patient-doctor relationship and  
2 limits the ability of the doctor and the patient to have a free, open, and candid  
3 conversation about COVID-19, its treatments, and the vaccines; simply put, the  
4 standard inhibits medical professionals from providing and patients from receiving  
5 adequate informed consent.  
6

7  
8 57.A “standard of care as established by medical experts, federal authorities and  
9 legitimate medical research” without reference, clarification, or defined terms, is  
10 vague and arbitrary. Dr. Cole, for example, is licensed in 9 states and is certified in  
11 pathology; he is the former owner of a medical research laboratory that operates  
12 legitimately and legally – what Dr. Cole may say or do in another state where he is  
13 licensed may be completely “legitimate” there while being deemed illegitimate  
14 under the Statement.  
15  
16

17 58.The distinction of Plaintiffs from other professionals who were not punished  
18 under the Statement is that Plaintiffs dissented politically and scientifically from  
19 health officials on various matters related to Covid, and when threats to Plaintiffs’  
20 licenses and practices by the Board as well as criticism by politicians and from  
21 mainstream and social media personalities could not silence these Plaintiffs, the  
22 Board took punitive action. This is simply due to Plaintiffs’ disagreement with the  
23 mainstream policies for the treatment of COVID-19.  
24  
25

26 59.Plaintiffs cannot communicate freely with patients, to provide informed  
27 consent, nor to treat them properly or according to the Plaintiff’s best judgment,  
28

1 when they fear being reported and potentially subject to discipline for giving a  
2 patient information that departs from the Commission's nameless experts and  
3 "legitimate" researchers.  
4

5 60.The Commission and its Statement have placed Plaintiffs between a rock and  
6 a hard place, as Plaintiffs' patients' best interests in receiving medical information  
7 necessary to make a scientifically based decision has been limited by the Statement,  
8 removing patient rights to informed consent. Insofar as Plaintiff Eggleston does not  
9 see or treat patients, he does have the ability to share scientifically and experience-  
10 based (nearly 50 years as a licensed physician) opinions with the public as he's done  
11 with his statements that have subjected him to discipline. The Statement has been  
12 weaponized to punish doctors who dissent from the alleged mainstream "legitimate"  
13 scientific community.  
14  
15  
16

17 61.The Statement further provides that the "WMC bases masking and  
18 vaccination safety on expert recommendations from the U.S. Centers for Disease  
19 Control and Prevention (CDC) and the Washington State Department of Health  
20 (DOH)."  
21

22 62.The Statement also note that the "WMC relies on the U.S Food and Drug  
23 Administration approval of medications to treat COVID-19 to be the standard of  
24 care," yet the Commission did nothing to change this position when the FDA's own  
25 attorneys stated on the record that the FDA never adopted a formal position on the  
26 use of Ivermectin for the treatment of COVID-19. (*Supra*, Introduction).  
27  
28

1 63.The Statement concludes by encouraging reporting of medical professionals  
2 that failed to adhere to its requirements, “[t]he public and practitioners are  
3 encouraged to use the WMC complaint forms when they believe the standard of care  
4 has been breached.” Encouraging the public to make anonymous complaints against  
5 medical practitioners creates an adversarial atmosphere of animosity between the  
6 public and the medical profession, the very thing the WMC accuses Plaintiffs of  
7 doing.  
8

9  
10 64.Furthermore, the WMC is allowing public complainants to complain  
11 anonymously. This use of the whistleblower statute is contrary to the plain language  
12 of the statute and public policy as it denies the medical professionals who have been  
13 accused the opportunity to face their accusers.  
14

15  
16 65.The Statement contradicts the responsible practice of medicine by mandating  
17 that medical professionals toe the government-sponsored line of speaking and  
18 treating patients rather than by urging doctors to tailor medical care and advice to  
19 each patient and his/her circumstances, using the medical professional’s best  
20 professional judgment.  
21

22  
23 66.The Statement fails to give patients the opportunity to receive information  
24 sufficient to make informed decisions for their own medical care based on complete  
25 information necessary to give informed consent.  
26

27  
28 67.The Statement also fails to recognize that standards of care are not static. What  
might be considered experimental or untested might in six months, or a year,

1 become the preferred treatment, especially for a novel disease where medical  
2 science is evolving where the government allows continued evolution.

3  
4 68.The Statement also fails to recognize that off-label use of a medication is  
5 common amongst the medical community, especially for new or evolving diseases,  
6 “[a]s off-label uses are presently an accepted aspect of a physician’s prescribing  
7 regimen the open dissemination of scientific and medical information regarding  
8 these treatments is of great import. The FDA acknowledges that physicians need  
9 reliable and up-to-date information concerning off-label uses.” *Wash. Legal Found.*  
10 *v. Friedman*, 13 F. Supp. 2d 51, 56 (D.D.C. 1998) Additionally, “The need for  
11 reliable information is particularly acute in the off-label treatment area because the  
12 primary source of information usually available to physicians -- the FDA approved  
13 label -- is absent.” *Id.*

14  
15  
16  
17 69.Upon information and belief, the Statement contains mere assumptions, naked  
18 assertions, and unsupported opinions conveyed by representatives of medical  
19 organizations (i.e., by using terms, such as “established science” and “verifiable  
20 fact”) that amounts to nothing more than a fallacious appeal to authority, rather than  
21 an argument based on evidence and good scientific standards.  
22  
23

24 70.“[A] professional license is property and is protected by the Constitution.” *Mishler*  
25 *v. Nevada State Bd. of Medical Examiners*, 896 F.2d 408, 409 (9th Cir. 1990).

26 71.A licensee’s “interest in liberty is similarly implicated if a charge impairs his  
27 reputation for honesty or morality,” public disclosure of the charges lodged against  
28

1 a licensee can implicate due process required to protect that property interest. *Vanelli*  
2 *v. Reynolds Sch. Dist. No. 7*, 667 F.2d 773, 777 (9th Cir. 1982).  
3

4 **V. CAUSES OF ACTION/CLAIMS FOR RELIEF**  
5 **COUNT I – VIOLATION OF THE FIRST AMENDMENT OF THE**  
6 **UNITED STATES CONSTITUTION**

7 **(The Position Statement Constitutes Content and Viewpoint Discrimination in**  
8 **Violation of the First Amendment; 42 U.S.C. § 1983)**

9 72.The allegations contained in paragraphs 1-71 are incorporated herein by  
10 reference and are re-alleged as set forth in full.

11 73.The First Amendment of the United States Constitution states, “Congress shall  
12 make no law . . . abridging the freedom of speech.”  
13

14 74.The First Amendment is incorporated to apply to the states by the Fourteenth  
15 Amendment. The First Amendment rights to free speech and freedom of association  
16 have been made enforceable against the states through the Fourteenth Amendment  
17 guarantee of Due Process. *NAACP v. Alabama*, 357 U.S. 449 (1958); *Gitlow v. New*  
18 *York*, 268 U.S. 652 (1925).  
19

20 75.The Statement constitutes an impermissible and unreasonable infringement  
21 on the free speech of medical professionals licensed in Washington on the basis of  
22 content and viewpoint of a doctor’s speech and imposes professional liability in  
23 contravention of the First Amendment.  
24

25 76.“In the marketplace of ideas, few questions are more deserving of free-speech  
26 protection than whether regulations affecting health and welfare are sound public  
27  
28

1 policy.” *Conant v. Walters*, 309 F.3d 629, 634 (9th Cir. 2002). Moreover, the  
2 Supreme Court has “stressed the danger of content-based regulations in the fields  
3 of medicine and public health, where information can save lives.” *Nat’l Inst. of*  
4 *Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2374 (2018) (internal  
5 quotation marks and citations omitted).  
6

7  
8 77.The Supreme Court has stated that “the Constitution protects the right to  
9 receive information and ideas,” which “is an inherent corollary of the rights of free  
10 speech and press that are explicitly guaranteed by the Constitution.” *Bd. of Educ.,*  
11 *Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 867 (1982).  
12 Accordingly, “where the effect of a vague statute would infringe upon a party’s First  
13 Amendment rights, standing requirements to challenge the statute under the  
14 Fourteenth Amendment Due Process Clause are broader than they otherwise might  
15 be.” *Arce v. Douglas*, 793 F.3d 968, 987 (9th Cir. 2015) (*citing Hynes v. Mayor &*  
16 *Council of Borough of Oradell*, 425 U.S. 610 (1976); *Maldonado v. Morales*, 556  
17 F.3d 1037 (9th Cir. 2009)). Thus, where a statute interferes with a plaintiff’s First  
18 Amendment right to receive information, plaintiff has standing to challenge the law,  
19 even if it does not apply to the plaintiff. *Id.* at 987-88. *See also: 44 Liquormart v.*  
20 *Rhode Island*, 517 U.S. 484, 512, 116 S. Ct. 1495, 1512, 134 L.Ed.2d 711, 733  
21 (1996) (“The text of the First Amendment makes clear that the Constitution  
22 presumes that attempts to regulate speech are more dangerous than attempts to  
23 regulate conduct. That presumption accords with the essential role that the free flow  
24  
25  
26  
27  
28

1 of information plays in a democratic society.”)

2 78.Challenges that involve First Amendment rights “present unique standing  
3 considerations” because of the “chilling effect of sweeping restrictions” on speech.  
4 *Ariz. Right to Life Pol. Action Comm. v. Bayless*, 320 F.3d 1002, 1006 (9th Cir.  
5 2003). When the challenged law “implicates First Amendment rights, the [standing]  
6 inquiry tilts dramatically toward a finding of standing.” *LSO, Ltd. v. Stroh*, 205 F.3d  
7 1146, 1155 (9th Cir. 2000).

8  
9  
10 79.Plaintiffs have the right to free speech, including the right to freely  
11 communicate information to their patients even if the government does not agree  
12 with the information conveyed.

13  
14 80.Plaintiffs have the corollary right to share ideas and information within the  
15 profession and with the public, including the right to engage in a genuine free  
16 speech dialogue, even if the government does not agree with the information or  
17 message conveyed in their messages.

18  
19  
20 81.The Position Statement invites arbitrary, subjective, content-based, and  
21 viewpoint discriminatory enforcement. Accordingly, the constitutionality of the law  
22 should be judged by strict scrutiny and is presumptively unconstitutional.

23  
24 82.There are many less restrictive measures the state could continue to  
25 implement which would have a more direct impact supporting the public health  
26 edicts, such as its public service announcements by academic physicians who  
27 support the mainstream COVID-19 narrative, influential endorsements, and other



1 measures geared directly to influence the public. The existence of these less  
2 restrictive measures eliminates a finding that the Statement is the least restrictive  
3 means possible, and the State's use of these tools demonstrates its past and current  
4 deployment of these less restrictive means. The less restrictive measures are also  
5 subject to public accountability in the free marketplace of ideas, where information  
6 can be freely debated.  
7

8  
9 83.The Statement also fails to satisfy intermediate scrutiny, which requires that  
10 Defendants prove to this Court that in formulating the law, the lawmakers have  
11 “drawn reasonable inferences based on substantial evidence.” *Peruta v. Cnty. of*  
12 *San Diego*, 824 F.3d 919, 957 (9th Cir. 2016). Upon information and belief, neither  
13 the Statement, nor its adopting history contains any evidence that Washington  
14 physicians have caused any harm to their patients by virtue of what they tell their  
15 patients about Covid-19 vaccines or treatments.  
16  
17

18  
19 84.Upon information and belief, there is no actual evidence in Statement that  
20 the alleged COVID-19 “misinformation” or “disinformation” has “erode[d] the  
21 public trust in the medical profession and endanger[ed] patients” or caused or  
22 contributed to any increase in COVID-19 infections, transmissions, hospitalizations  
23 or COVID-19 related deaths. In fact, the Statement does not include supporting  
24 information or documentation that could have been hyperlinked as was the “WMC  
25 complaint forms” and the FSMB’s “COVID-19 vaccine misinformation” position  
26 statement.  
27  
28

1 85.Each of the Plaintiffs' declaration<sup>13</sup> contains proof of contradictory public  
2 health information by attaching factually accurate information about differing  
3 levels of success on the different health measures employed throughout the world  
4 in addressing the COVID-19 pandemic, including not recommending vaccines for  
5 certain population subsets. The declaration also establishes that some of these  
6 health measures have produced better public health metrics than what has been  
7 achieved in the US.  
8

10 86.42 U.S.C. §§ 1983, 1988 entitle Plaintiffs to a Temporary Restraining Order,  
11 declaratory relief, and preliminary and permanent injunctive relief invalidating and  
12 restraining enforcement of the Statute. Plaintiffs have suffered irreparable harm  
13 having been subject to discipline which has been publicly flaunted by the  
14 Commission. Unless Defendants are enjoined from continuing enforcement of the  
15 Statute, Plaintiffs will continue to suffer irreparable harm.  
16  
17

18 87.Even if Plaintiffs are ultimately vindicated, the process is the punishment,  
19 and highlights the chilling nature of the Statement, as evidenced by these Plaintiffs'  
20 experience and that of other medical professionals (Section I, *supra*; *See*: Cole's  
21

22  
23 13 Plaintiffs Eggleston notes the success of the in Brazil, Philippines, and India  
24 Wilkinson, Decl., ¶ 11. Plaintiff Wilkinson cites worldwide COVID-19 studies.  
25 Wilkinson, Decl., ¶ 32. Dr. Cole cites to early COVID-19 treatment articles found  
26 at: , which discusses worldwide treatment of COVID-19. Cole Decl., ¶ 14.  
27  
28

1 loss of business addressed in ¶¶ 12-13 and in his declaration.). At a minimum, each  
2 Plaintiff's First Amendment rights of free speech has been violated, and "[t]he loss  
3 of First Amendment freedoms, for even minimal periods of time, unquestionably  
4 constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373-74, 96 S. Ct.  
5 2673, 2690, 49 L.Ed.2d 547, 565-66 (1976). Additionally, Plaintiffs have been  
6 placed in a position to align speech with the Statement or risk losing license, and  
7 an unconstitutional speech restriction is not salvageable because enforcement  
8 authorities say that it will be enforced only in a narrow or benign manner. *See, e.g.*,  
9 *United States v. Wunsch*, 84 F.3d 1110, 1118 (9th Cir. 1996).

13 88.The Statement also infringes on the First Amendment rights of patients to  
14 receive advice and counsel from the doctors they consult. The patients are entitled  
15 to unfiltered consultations with their doctors, rather than a potentially narrow self-  
16 censored message that hues closely to a preferred government narrative regarding  
17 COVID-19.

19 89.No speech about other diseases, no matter how serious, is covered. And  
20 speakers who parrot the contemporary "consensus" (i.e., those who speak  
21 "information," rather than "dis/misinformation") may continue speaking without  
22 risk of enforcement; only those who dissent are silenced. There can be no question  
23 that "official suppression of ideas is afoot." *R.A.V. v. City of St. Paul, Minn.*, 505  
24 U.S. 377, 390 (1992).

28 90.The Statement imposes a government mandate to espouse only those ideas

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1 that the State of Washington deems acceptable. This “on its face burdens disfavored  
2 speech by disfavored speakers.” *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 564  
3 (2011).  
4

5 91.No speech about other diseases, no matter how serious, is covered. And  
6 speakers who parrot the contemporary “consensus” may continue speaking; only  
7 those who may dissent are silenced. There can be no question that “official  
8 suppression of ideas is afoot.” *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 390  
9 (1992).  
10

11 92.“If there is any fixed star in our constitutional constellation, it is that no  
12 official, high or petty, can prescribe what shall be orthodox in politics, nationalism,  
13 religion, or other matters of opinion or force citizens to confess by word or act their  
14 faith therein.” *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).  
15

16 93.“If there is a bedrock principle underlying the First Amendment, it is that the  
17 government may not prohibit the expression of an idea simply because society finds  
18 the idea itself offensive or disagreeable.” *Texas v. Johnson*, 491 U.S. 397, 414  
19 (1989).  
20

21 94.The Statement is not a traditional regulation of the conduct of medical  
22 professionals, although it tries to disguise itself as a conduct regulation by  
23 addressing an undefined, non-existent “standard of care” or through its multiple  
24 uses of the word “legitimate.”  
25  
26  
27

28 95.The Statement directly and specifically burdens speech and discriminates

1 against that speech based on both content and viewpoint.

2 96.The fact that some doctors’ views are at odds with the official views of  
3 government health authorities does not undermine the right of doctors to express  
4 them; instead “minority views are treated with the same respect as are majority  
5 views.” *Bd. of Regents of Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 235  
6 (2000).  
7

8  
9 97.42 U.S.C. § 1983 provides a cause of action against any person who, under  
10 color of law of any state, subjects any person within the jurisdiction of the United  
11 States to a deprivation of any rights, privileges, or immunities secured by the  
12 Constitution.  
13

14 **COUNT II — THE POSITION STATEMENT IS VOID FOR VAGUENESS**  
15 **AND VIOLATES PLAINTIFFS’ FIFTH AND FOURTEENTH**  
16 **AMENDMENT DUE PROCESS RIGHTS**

17 **(Violation of the First, Fifth, and Fourteenth Amendments of the United**  
18 **States Constitution)**

19 98.The allegations contained in paragraphs 1-97 are incorporated herein by  
20 reference and are re-alleged as set forth in full.

21 99.A statute is unconstitutionally vague when it either “fails to provide a person  
22 of ordinary intelligence fair notice of what is prohibited or is so standardless that it  
23 authorizes or encourages seriously discriminatory enforcement.” *United States v.*  
24 *Williams*, 553 U.S. 285, 304 (2008); *see also Hill v. Colorado*, 530 U.S. 703, 732  
25 (2000); *Tingley v. Ferguson*, 47 F.4th 1055, 1089 (9th Cir. 2022); *United States v.*  
26 *Wunsch*, 84 F.3d 1110, 1119 (9th Cir. 1996). As the Ninth Circuit recently held:  
27  
28

1 “The operative question under the fair notice theory is whether a reasonable person  
2 would know what is prohibited by the law.” *Tingley*, at 1089.

3  
4 100. To comply with the Fifth Amendment Due Process clause applicable to  
5 the states under the Fourteenth Amendment, state laws must be clear enough so that  
6 a reasonable person can determine what the law allows and prohibits. Otherwise, the  
7 law is struck down for vagueness. When a state law infringes the First Amendment  
8 right of free speech, there is a “heightened specificity” requirement for the law to be  
9 held constitutional.  
10

11  
12 101. The Fourteenth Amendment provides “. . . nor shall any State deprive  
13 any person of life, liberty, or property, without due process of law.”

14  
15 102. Due process requires that people of ordinary intelligence be able to  
16 understand what conduct a given statute, rule or regulation prohibits.

17  
18 103. Statutes, rules, or regulations that fail to provide this fair notice and  
19 clear guidance are void for vagueness.

20  
21 104. Statutes, rules, or regulations that authorize or even encourage arbitrary  
22 or discriminatory enforcement are void for vagueness.

23  
24 105. Statutes, rules, or regulations implicating and jeopardizing First  
25 Amendment rights are required to be especially precise.

26  
27 106. The Statement does not define the terms “disinformation,”  
28 “misinformation,” “medical experts,” “legitimate medical research,” or “standard of  
care” with any precision or specificity and therefore does not give licensed doctors

1 like the Plaintiffs clear and adequate notice of what will be considered a violation of  
2 the Statute.

3  
4 107. The Statement imposes an unconstitutionally vague restriction on the  
5 speech of doctors such as Plaintiffs.

6  
7 108. 42 U.S.C. §§ 1983 and 1988 entitle Plaintiffs to declaratory relief and  
8 preliminary and permanent injunctive relief invalidating and restraining  
9 enforcement of the Statute and damages for the infringement on their constitutional  
10 rights. Unless Defendants are restrained or enjoined from enforcing the Statute,  
11 Plaintiffs will continue to suffer additional irreparable harm.

12  
13 109. Plaintiffs found it necessary to engage the services of private counsel  
14 to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of  
15 attorneys' fees, as well as reasonable costs of suit, under 42 U.S.C. § 1988.

16  
17 110. Plaintiffs are entitled to damages sought pursuant to 42 U.S.C. § 1983.

18  
19 **COUNT III—VIOLATION OF ARTICLE I, SECTION 5 OF**  
20 **WASHINGTON STATE CONSTITUTION**  
21 **(Washington Constitution, Article I, Section 5)**

22  
23 111. The allegations contained in paragraphs 1-110 are incorporated herein  
24 by reference and are re-alleged as set forth in full.

25  
26 112. Washington Constitution Article I, Section V, *Freedom of Speech*,  
27 reads: "Every person may freely speak, write and publish on all subjects, being  
28 responsible for the abuse of that right."

1 113. The most critical flaw in the Statement is its connection with  
2 “legitimate medical research” and the Statement’s reliance on “medical experts” that  
3 fails to define or identify either term and/or the prohibited conduct.  
4

5 114. “In regard to claims of overbreadth, the text of art. I, § 5 is *less tolerant*  
6 than the First Amendment of overbroad restrictions on expression when such  
7 restrictions rise to the level of a prior restraint.” *Ino Ino, Inc. v. City of Bellevue*,  
8 132 Wash. 2d 103, 117, 937 P.2d 154, 163 (1997); *citing O’Day v. King*  
9 *County*, 109 Wn.2d 796, 804, 749 P.2d 142 (1988). (Emphasis added.) “The broad  
10 language of art. I, § 5 has been found to warrant greater protection for speech, both  
11 spoken and written, in some contexts. [...] Moreover, art. I, § 5 mentions only the  
12 right to speak, write and publish.” *Id.* (cleaned up.)  
13  
14  
15

16 115. Content-based regulations target speech based on its communicative  
17 content. “As a general matter, such laws are presumptively unconstitutional and  
18 may be justified only if the government proves that they are narrowly tailored to  
19 serve compelling state interests.” *Nat’l Inst. of Family & Life Advocates v. Becerra*,  
20 138 S. Ct. 2361, 2371 (2018); *Sheehan v. Gregoire*, No. C02-1112C, at \*1 (W.D.  
21 Wash. May 22, 2003) (“the First Amendment precludes the government from  
22 proscribing speech because it disapproves of the ideas expressed. *R.A.V. v. City of*  
23 *St. Paul*, 505 U.S. 377, 382 (1992).”). In Washington State, even content-neutral  
24 time, place, and manner restrictions must meet strict scrutiny and be narrowly  
25 tailored to serve a compelling government interest. *State v. Noah*, 103 Wn. App.  
26  
27  
28



1 29, 41 (2000).

2 116. “The Washington Supreme Court applies a federal analysis when  
3 confronting Article I, Section 5 challenges to restrictions on commercial  
4 speech.” *Nat’l Fed’n of Retired Persons v. Ins. Comm’r*, 120 Wash.2d 101, 119,  
5 838 P.2d 680 (1992); *see also, Ino Ino, Inc. v. City of Bellevue*, 132 Wash.2d 103,  
6 116, 937 P.2d 154 (1997). Thus, this Court should “incorporate[] Plaintiffs’  
7 Washington Constitution claim.” *Ballen v. City of Redmond*, No. C03-2580P, 2004  
8 U.S. Dist. LEXIS 31358, at \*11 (W.D. Wash. June 15, 2004; *Aff’d. Ballen v. City*  
9 *of Redmond*, 466 F.3d 736 (9th Cir. 2006)).

10 117. 42 U.S.C. § 1983 provides a cause of action against any person who,  
11 under color of law of any state, subjects any person within the jurisdiction of the  
12 United States to a deprivation of any rights, privileges, or immunities secured by  
13 the Constitution.

14  
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18  
19 **COUNT IV – THE POSITION STATEMENT VIOLATES THE**  
20 **WASHINGTON ADMINISTRATIVE PROCEDURES ACT, REVISED**  
21 **CODE OF WASHINGTON SECTION 34.05, ET SEQ.**

22 **(The Position Statement Constitutes a Rule and was Adopted Without Proper**  
23 **Notice and Comment and Outside of the Requirements of RCW 34.05.230 in**  
24 **Violation of the Administrative Procedures Act; The Statement Violates**  
25 **Constitutional Provisions (i.e., First, Fifth, and Fourteenth Amendments of**  
26 **US Constitution); the Statement Provided No Comment Period and was**  
27 **Adopted Without Compliance with Statutory Rule-Making Procedures; and**  
28 **the Statement is Arbitrary and Capricious)**

118. The allegations contained in paragraphs 1-117 are incorporated herein  
by reference and are re-alleged as set forth in full.

1 119. The Statement is a rule as it: (1) has “general applicability;” (2) the  
2 violation of which subjects a person to a penalty or administrative sanction; and (3)  
3 “establishes, alters, or revokes any qualification or requirement relating to the  
4 enjoyment of benefits or privileges conferred by law.” RCW 34.05.010(16).

6 120. The Statement adds “new requirement[s] to an already well defined  
7 regulation” by requiring physician speech and treatment methodologies to comport  
8 with the Commission’s ill-defined COVID-19 narrative. Such requirements  
9 constitute “a ‘rule’ subject to the formal rule making procedures.” *Providence*  
10 *Physician Servs. Co. v. Dep’t of Health*, 196 Wash. App. 709, 726-27, 384 P.3d 658,  
11 667 (2016); *Citing Failor’s Pharmacy v. Dep’t of Soc. & Health Servs.*, 125 Wn.2d  
12 488, 886 P.2d 147 (1994). RCW 7.70.040, which adopted a standard of care for  
13 COVID-19 related treatment pre-existed the Statement, and the Statement did  
14 nothing more than add ill-defined requirements to the well-defined regulation.  
15

18 121. The requirement to not spread “misinformation” or “disinformation,”  
19 subjective terms created by the Commission *for* its regulation of medical  
20 professionals during the COVID-19 pandemic prescribed by the Statement, and the  
21 Statement’s associated encouragement of reporting complaints to the WMC and the  
22 Statement’s threat to “subject [licensees] to disciplinary action,” constitute a Rule,  
23 which was without comment in violation of the Administrative Procedures Act.  
24 RCW 34.05.010(16).  
25  
26  
27

28 122. As a Policy Statement, as defined by the WMC, the Statement is a  
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1 “written description of the current approach of an agency to implementation of a  
2 statute or other provision of law, of a court decision, or of an agency order, including  
3 where appropriate the agency's current practice, procedure, or method of action  
4 based upon that approach.”<sup>14</sup>

6 123. The APA provides that “Current interpretive and policy statements are  
7 advisory only. To better inform and involve the public, an agency is encouraged to  
8 convert long-standing interpretive and policy statements into rules.” Policy  
9 Statements are not and cannot be enforceable.

11 124. The Statement was adopted in contravention of the APA requirement  
12 to publish interpretive or policy statements in the Washington State Register, and  
13 the challenged Statement was not. *See*: RCW 34.05.230(1) and (4). The Statement  
14 was not published in this manner violating the APA.

16 125. A rule will be reversed under the Washington Administrative  
17 Procedures Act where an administrative decision “is based on an error of law, if it is  
18 not based on substantial evidence, or if it is arbitrary or capricious.” *Whitehall v.*  
19 *Wash. State Emp’t Sec. Dep’t*, No. 83299-9-I, 2023 Wash. App. LEXIS 159, at \*7-  
20 8 (Ct. App. Jan. 30, 2023) *Citing*: RCW 34.05.570(3)(d),(e), (i); *Michaelson v.*

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24 14 WMC Website, *Policies & Rules*. Available at: [https://wmc.wa.gov/policies-](https://wmc.wa.gov/policies-rules#Rules%20/%20Policies%20/%20Procedures%20/%20Guidelines%20/%20IS)  
25 [rules#Rules%20/%20Policies%20/%20Procedures%20/%20Guidelines%20/%20IS](https://wmc.wa.gov/policies-rules#Rules%20/%20Policies%20/%20Procedures%20/%20Guidelines%20/%20IS)  
26

27 Last accessed: February 23, 2023.

1 *Emp't Sec. Dep't*, 187 Wn. App. 293, 298, 349 P.3d 896 (2015).

2 126. The Statement violates the Administrative Procedures Act because it  
3  
4 violates constitutional provisions. RCW 34.05.570(2)(c).

5 127. The Statement violates the Administrative Procedures Act because it  
6  
7 was adopted without compliance with statutory rule-making procedures. RCW  
8 34.05.570(2)(c).

9 128. The Statement violates the Administrative Procedures Act because it is  
10  
11 arbitrary and capricious. RCW 34.05.570(2)(c).

12 129. The Statement violates the Administrative Procedures Act because it is  
13  
14 not supported by substantial evidence. RCW 34.05.570(3)(e).

15 130. The Washington Administrative Procedure Act obligates the grant of  
16  
17 relief when an agency has acted *ultra vires*, or outside of its statutory authority or  
18 jurisdiction. RCW 34.05.570(3)(b).

19 131. The Statement is arbitrary and capricious and was adopted in an  
20  
21 arbitrary and capricious manner without “a process of reason” with no supporting  
22 evidence or clearly defined terms. *Puget Sound Grp. LLC v. Wash. State Liquor &*  
23 *Cannabis Bd.*, No. 50090-6-II, 2018 Wash. App. LEXIS 1600, at \*10 (Ct. App. July  
24 10, 2018) *quoting Rios v. Dep't of Labor & Indus.*, 145 Wn.2d 483, 501, 39 P.3d  
25 961 (2002)).

26 ///  
27  
28

1     **COUNT V—VIOLATION OF DUE PROCESS CLAUSE OF THE FIFTH**  
2     **AND FOUREENTH AMENDMENTS OF THE UNITED STATES**  
3     **CONSTITUTION**  
4     **(Violation of Patient Fundamental Rights to Informed Consent and Personal**  
5     **Bodily Integrity Include the Right to Off-Label Treatment for COVID-19; 42**  
6     **United States Code § 1983)**

7     132.     The allegations contained in paragraphs 1-131 are incorporated herein  
8     by reference and are re-alleged as set forth in full.

9     133.     In *Washington v. Glucksberg*, the United States Supreme Court  
10    affirmed that the Due Process Clause of the United States Constitution protects  
11    bodily integrity, as follows: “We have also assumed, and strongly suggested, that  
12    the Due Process Clause protects the traditional right to refuse unwanted lifesaving  
13    medical treatment.” *Washington v. Glucksberg*, 521 U.S. 702, 720, 117 S. Ct. 2258,  
14    2267-68, 117 S. Ct. 2302, 2267-68 (1997) Citing: *Cruzan v. Dir., Mo. Dep’t of*  
15    *Health*, 497 U.S. 261, 278-279 (1990). But we “have always been reluctant to  
16    expand the concept of substantive due process because guideposts for responsible  
17    decisionmaking in this uncharted area are scarce and open-ended.” *Collins*, 503  
18    U.S. 115, 125 (1992). “By extending constitutional protection to an asserted right or  
19    liberty interest, we, to a great extent, place the matter outside the arena of public  
20    debate and legislative action. The Due Process Clause guarantees more than fair  
21    process, and the “liberty” it protects includes more than the absence of physical  
22    restraint. *Washington v. Glucksberg*, 521 U.S. 702, 720, 117 S. Ct. 2258, 2267, 117  
23    S. Ct. 2302, 2267 (1997) Citing: *Collins v. Harker Heights*, 503 U.S. 115, 125  
24    25  
26  
27  
28

1 (1992) Importantly, this extension has included the protection of one’s “bodily  
2 integrity.” *Id.*, Citing *Rochin v. California*, 342 U.S. 165 (1952).

3  
4 134. A fundamental right must be either enumerated in the Bill of Rights or  
5 “deeply rooted in this Nation’s history and tradition . . . and implicit in the concept  
6 of ordered liberty, such that neither liberty nor justice would exist if they were  
7 sacrificed.” *Kheriaty v. Regents of the Univ. of Cal.*, No. 22-55001, 2022 U.S. App.  
8 LEXIS 32406, at \*3 (9th Cir. Nov. 23, 2022) Citing: *Washington v. Glucksberg*, 521  
9 U.S. 702, 720-21, 117 S. Ct. 2258, 117 S. Ct. 2302, 138 L. Ed. 2d 772  
10 (1997) (cleaned up).

11  
12  
13 135. A court will apply strict scrutiny when the challenged government  
14 action infringes on a fundamental right. *Id.*; Citing *Reno v. Flores*, 507 U.S. 292,  
15 301-02, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993).

16  
17 136. Based on the right to privacy adopted by the United States Supreme  
18 Court, *supra*, Plaintiffs seek a declaratory judgment that patients have a privacy right  
19 to obtain prescriptions for their off-label drugs, and that the Board cannot investigate  
20 or sanction a physician solely for writing prescriptions for the off-label use of  
21 medications for Covid-19. Plaintiffs also seek a permanent injunction against the  
22 Defendants enforcing the requested declaratory judgment.

23  
24  
25 137. “[T]he federal government has recognized that doctors may use  
26 medical devices for **off-label** purposes as long as it is medically necessary and  
27 reasonable.” *The Dan Abrams Co. LLC v. Medtronic Inc.*, 850 F. App’x 508, 509  
28

(9th Cir. 2021). *Citing: Buckman Co. v. Plaintiffs’ Legal Comm.*, 531 U.S. 341, 350, 121 S. Ct. 1012, 148 L. Ed. 2d 854 (2001) (“‘[O]ff label’ usage of medical devices . . . is an accepted and necessary corollary of the FDA’s mission to regulate in this area without directly interfering with the practice of medicine.”); U.S. Dep’t of Health & Hum. Serv. (HHS), *Medicare Benefit Policy Manual*, ch. 14 § 10, available at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/bp102c14.pdf> (noting that Medicare reimburses for “[d]evices cleared by the FDA through the 510(k) process”—not cleared *uses* of a device) (emphasis added). The FDA also allows off-label uses for drugs and biologics in addition to medical devices. *See*: <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/label-and-investigational-use-marketed-drugs-biologics-and-medical-devices>.

138. The Centers for Medicare & Medicaid (CMS) guidance explain that “a device is not ‘reasonable and necessary’ — and thus is not eligible for Medicare coverage—if it is (a) “not ‘safe’ and ‘effective,’” (b) “experimental,” (c) “not appropriate for the individual beneficiary’s needs,” or (d) “substantially more costly than a medically appropriate and realistically feasible alternative pattern of care.” *Int’l Rehab. Sci., Inc.*, 688 F.3d at 997 (cleaned up). CMS guidance makes clear that safety and efficacy determinations are based on “authoritative evidence” or “general[] accept[ance] in the medical community.” *Id.*

139. The FDCA expressly protects **off-label** use: “Nothing in this chapter

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1 shall be construed to limit or interfere with the authority of a health care practitioner  
2 to prescribe or administer any legally marketed device to a patient for any condition  
3 or disease within a legitimate health care practitioner-patient relationship.” 21  
4 U.S.C. § 396. In addition, the Supreme Court has emphasized that **off-label** use by  
5 medical professionals is not merely legitimate but important in the practice of  
6 medicine. *Buckman Co. v. Plaintiffs’ Legal Comm.*, 531 U.S. 341, 350, 121 S. Ct.  
7 1012, 148 L. Ed. 2d 854 (2001). *Carson v. Depuy Spine, Inc.*, 365 F. App’x 812, 815  
8 (9th Cir. 2010).

11  
12 140. Upon information and belief, prescribing Ivermectin and HCQ are “not  
13 approved” by the FDA for treatment and prevention of Covid-19; however, the FDA  
14 has not addressed off-label use of either drug for the treatment of COVID-19, and  
15 FDA legal representatives confirmed that the FDA’s position did not constitute  
16 binding, final rulemaking. *See*: Introduction, *supra*. The FDA has not taken a  
17 position on off-label use notwithstanding the fact that dozens of studies worldwide  
18 have demonstrated that these drugs are beneficial for the treatment of Covid-19.

19  
20  
21 141. Washington’s standard of care on the treatment of COVID-19 outside  
22 of the “reasonably prudent” standard discussed, *supra*, then the Commission adopted  
23 a standard through the Statement. As addressed above, adopting a standard of care  
24 through a Position Statement adopted in a Special Meeting violated the Washington  
25 APA (Count V, *supra*). Moreover, the standard of care adopted through the  
26 Statement defers to the FDA, which allows for off-label use of devices and drugs.



1 As the Statement cherry-picks its allegiance to *portions* of the FDA’s rules and  
2 regulations to support its conclusion, the WMC, through the Statement, has violated  
3 patient rights to informed consent, which could offer alternative treatment with  
4 medicines, including Ivermectin that offered potentially effective off-label uses.  
5 Nonetheless, Plaintiffs were barred from (1) discussing; and (2) treating patients  
6 with off-label medicines that would have otherwise been allowed under current FDA  
7 regulations.  
8

10 142. In Washington, the doctrine of informed consent requires a physician,  
11 prior to providing treatment, to “inform the patient of the treatment's attendant risks.  
12 The doctrine is premised on the fundamental principle that “[e]very human being  
13 of adult years and sound mind has a right to determine what shall be done with his  
14 own body’.” *Smith v. Shannon*, 100 Wn.2d 26, 29, 666 P.2d 351, 354 (1983). *Citing:*  
15 *Schloendorff v. Society of N.Y. Hosp.*, 211 N.Y. 125, 129, 105 N.E. 92 (1914)  
16 (Cardozo, J.), *overruled on other grounds*, *Bing v. Thunig*, 2 N.Y.2d 656, 667, 143  
17 N.E.2d 3, 163 N.Y.S.2d 3 (1957). Importantly, “[a] necessary corollary to this  
18 principle is that the individual be given sufficient information to make  
19 an *intelligent* decision.” *Id. Citing: Canterbury v. Spence*, 464 F.2d 772, 783 (D.C.  
20 Cir. 1972).

## 25 COUNT VI—DEFAMATION/FALSE LIGHT

26 143. The allegations contained in paragraphs 1-142 are incorporated herein  
27 by reference and are re-alleged as set forth in full.  
28

1 144. Defendants, by printing each Plaintiff's statement of charges and  
2 declaring that the Plaintiff has spoken mis/disinformation, have provided a publicly  
3 available document with false and misleading statements about each Plaintiff. These  
4 statements were libelous and defamatory in nature as Defendants stated that the  
5 Plaintiffs' statements were dis/misinformation. As the Commission publicly  
6 displays statements of charges and other disciplinary actions, Defendants should  
7 have known that these statements would be viewed by the public.  
8

9  
10 **COUNT VII—TORTIOUS INTERFERENCE WITH BUSINESS**

11 **RELATIONSHIP AND/OR EXPECTANCY AS TO PLAINTIFF COLE**

12  
13 145. The allegations contained in paragraphs 1-144 are incorporated herein  
14 by reference and are re-alleged as set forth in full.

15  
16 146. The Commission's prosecution and persecution of each Plaintiff has  
17 wrongfully caused harm to each and has interfered with Wilkinson and Cole's  
18 businesses and was a cause of the dissolution of Cole's business. The Commission's  
19 ill-founded, improper, and unconstitutional bases for targeting Cole and making a  
20 public spectacle of the prosecution of his licensing is clear evidence of defendants'  
21 tortious interference with Cole's legitimate business and professional expectancy in  
22 being able to continue his Pathology and diagnostics practice. As Cole has declared,  
23 and as stated above, Cole has lost his business due to the Commission's publicity of  
24 the prosecution of his license. *Supra*, ¶¶ 10-13; Cole Decl., ¶ 12-14.  
25  
26  
27

28 ///

## VI. CONCLUSION AND RELIEF SOUGHT

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against the Defendants as set forth in this Complaint and specifically that the Court:

A. Declare that the Statement violates Plaintiffs' rights under the First Amendment of the United States Constitution because it discriminates based on viewpoint and content;

B. Declare that the Statement violates rights to due process of law under the Fourteenth Amendment to the United States Constitution due to its vagueness;

C. Declare that the Statement violates Washington State Administrative Procedures Act as the rule violates the US and Washington Constitutional principles, was adopted without compliance of statutory rule-making procedures, and is arbitrary and capricious;

D. Issue a Temporary Restraining Order, then an injunction restraining and enjoining Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them (*see* Fed. R. Civ. P. 65(d)(2)), and each of them, from enforcing the Statement against Plaintiffs and all other medical professionals subject to licensing or discipline by the Commission;

E. Stay all underlying proceedings related to each Plaintiff's charges in full (respectively, Cole: SOC No. 2022-207; Wilkinson: SOC No. M2022-196; and Eggleston: SOC No. M2022-204), or in part, as related to: (1) enforcement of the

1 challenged Statement; (2) COVID-19 “misinformation” and/or “disinformation;” (3)  
2 claims that the Plaintiff’s speech resulted in “mistrust” for, or otherwise impacted,  
3 the medical community or the community(ies) at large; and/or (4) the use,  
4 application, prescription, or treatment of persons with Ivermectin or  
5 Hydroxychloroquine;  
6

7  
8 F. Stay all other disciplinary proceedings by the WMC for medical professionals  
9 as related to the Statement or against professionals who: (1) expressed opinions on  
10 COVID-19 and Ivermectin or Hydroxychloroquine treatment; or (2) who or treated  
11 COVID-19 patients with the such medicines, resulting in discipline from the WMC;  
12

13 G. Issue Attorney’s fees, costs, and expenses pursuant to 42 U.S.C. §§ 1983 and  
14 1988;  
15

16 H. Award Damages for Plaintiff Cole in the amount of at least \$32,000,000; and

17 I. Any other legal or equitable relief to which Plaintiffs may be entitled.  
18

19 **DATED** this 10th day of March, 2023.

20 **SILENT MAJORITY FOUNDATION**

21  
22 /s/ Simon Peter Serrano

23 Simon Peter Serrano, WSBA No. 54769  
24 Karen L. Osborne, WSBA No. 51433  
25 Austin F. Hatcher, WSBA No. 57449  
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DATED this 10th day of March, 2023.

/s/Madeline Johnson  
Madeline Johnson

Silent Majority Foundation  
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